

REMARKS

Introductory Comments

Reconsideration of the above-identified application in view of the above amendments and arguments set forth is respectfully requested.

Claims 62-86 are pending and under consideration. Claim 73 has been amended in order to correct a typographical error. Specifically, the comma at the end of the claims has been deleted and a period has been added therefor.

Additionally, the specification has been amended on page 1 by correcting the U.S. Application No. which this application claims priority from. No new matter has been added as a result of these amendments.

Drawings

The Examiner states that the color photographs have been accepted only for examination purposes. Applicants will petition for the color photographs as acceptable drawings under 37 CFR 1.17(h) upon allowance of the claims.

Declaration and Power of Attorney

Applicants herewith enclose a new Declaration and Power of Attorney that contains the correct application number of the application from which this application claims priority from.

Rejection of Claims 65-67, 69, 74-77, 79, 82-84 and 86

Under 35 U.S.C. § 102(e) or § 103(a)

Claims 65-67, 69, 74-77, 79, 82-84 and 86 are rejected under 35 U.S.C. § 102(e), as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Cosner, U.S. Patent No. 6,353,162.

Specifically, the Examiner asserts that Cosner discloses New Guinea impatiens plants having striped petals, referred to as "marbled" petals (Figures 2 and 3 and column 9, lines 2-4). The Examiner also states that Cosner discloses

cuttings, pollen and ovules. The Examiner asserts that the product-by-process claims do not recite any characteristics that would distinguish the claimed plants from those of the prior art. Finally, the Examiner states that even if the claimed plants possess some characteristic not possessed by those of Cosner, the invention would still be obvious because Cosner teaches that mutagenesis is commonly used to produce sports (column 2, lines 56-60).

Applicants respectfully traverse this rejection.

Cosner discloses the following (column 2, lines 56-60, as cited by the Examiner):

"X-rays or chemical mutagens have been typically used to induce sports off a single seedling. This process is unpredictable and has a low yield. Moreover, it is expensive inconvenient, and inherently dangerous to use x-ray labs or chemical mutagens to induce the sports. A simpler, less expensive, safer, and more predictable process of producing asexually reproducible sports off a single seeding would be desirable and advantageous (emphasis added)."

Applicants submit that based on the above teaching of Cosner that one skilled in the art would not be motivated or inclined to use mutagens, electromagnetic radiation or ion beams for modifying the claimed plants for the reasons Cosner outlines above. Since the claimed plants are genetically altered in a cellular level, the claimed plants are not the same as those disclosed by Cosner.

Accordingly, Applicants respectfully request withdrawal of the rejection of claims 65-67, 69, 74-77, 79, 82-84 and 86 under 35 U.S.C. § 102(e), as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Cosner, U.S. Patent No. 6,353,162.

Rejection of Claims 68, 78 and 85 Under 35 U.S.C. § 103(a)

Claims 68, 78 and 85 are rejected under 35 U.S.C. § 103(a), as being unpatentable over Cosner, U.S. Patent No. 6,353,162 in view of Stephens *et al.*,

“XII Micropropagation of *Impatiens* spp.”, Biotechnology in Agriculture and Forestry, Vol. 20, 1992 (herein “Stephens”).

Specifically, the Examiner asserts that Cosner does not teach using tissue cultures of regenerable cells from New Guinea impatiens having striped flowers. However, the Examiner asserts that Stephens teaches using tissue cultures in New Guinea impatiens as a means for asexual propagation (page 163). The Examiner concludes that it would have been obvious to one of ordinary skill in the art to have combined the teachings of Stephens, to the method of propagating the plants of Cosner, in order to maintain a virus-free stock, increase breeding programs and propagate certain genotypes that are difficult by conventional methods (as taught by Stephens on page 165).

Applicants respectfully traverse this rejection.

As pointed out to the Examiner above, one skilled in the art would not be motivated or inclined to use mutagens, electromagnetic radiation or ion beams for modifying the claimed plants based on the teaching of Cosner. As stated by the Examiner, Stephens merely teaches using tissue cultures as a means for asexual propagation. Stephens does not cure the deficiencies of Cosner.

Therefore, Applicants respectfully request withdrawal of the rejection of claims 68, 78 and 85 under 35 U.S.C. § 103(a), as being unpatentable over Cosner, U.S. Patent No. 6,353,162 in view of Stephens *et al.*, “XII Micropropagation of *Impatiens* spp.”, Biotechnology in Agriculture and Forestry, Vol. 20, 1992.

Rejection of Claims Under 35 U.S.C. § 103(a)

Claims 62-64, 70-73 and 80-81 are rejected under 35 U.S.C. § 103(a), as being unpatentable over Cosner, U.S. Patent No. 6,353,162 in view of Datta, “Ornamental Plants Role of Mutation”, Daya Publishing House, Delhi – 110035, 1997, Broertje *et al.*, “Application of Mutation Breeding Methods in the Improvement of Vegetatively Propagated Crops”, Elsevier Scientific Publishing Company, 1978 (herein “Broertje”) and Sharova *et al.*, “Mutation Variability of

Decorative Flowering Annual Plants", Bulletin of the Moldavian SSr Academy of Sciences, No. 3, 1973, pp. 47-53 (translated) (herein "Sharova").

Specifically, the Examiner asserts that although Cosner discloses New Guinea impatiens having striped flowers and that x-rays and chemical mutagens and chemical mutagens have been used to produce sports, Cosner does not teach the methods for doing so (column 2, line 56). However, the Examiner asserts that 1) Datta discloses using gamma rays for changing the flower color (Examples on page 57, last paragraph, page 65, third paragraph, page 68, fourth paragraph, page 69, last paragraph, page 170, last paragraph and page 174, cultivars under "Rose"), 2) Broertjes teaches production of petals that are striped in many plants (the Examiner cites Broertjes at pages 84, 154 and 159 for dahlia, 'Zebra Stazeb' and 'Sim Feu Follet', respectively), and 3) Sharova teaches using chemical mutagens in addition to irradiation to cause "petal mottling" in balsam (page 9, third paragraph and Table 2). The Examiner states that balsam is in the Balsaminaceae family that also includes the New Guinea impatiens that has been developed from the species *Impatiens hawkeri*.

The Examiner concludes that it would have been obvious to one of ordinary skill in the art to use irradiation and/or chemical mutagenesis as taught by Datta, Broertjes and Sharova, with the motivation of obtaining an easily applicable, clean method with good penetration of reproducibility, high mutation frequency and large economic importance to the horticulture industry (Broertjes at pages 12-13). The Examiner further states that there would have been a reasonable expectation of success, because it was already known that striped petals could be produced in impatiens.

Applicants respectfully traverse this rejection.

As pointed out to the Examiner above, one skilled in the art would not be motivated or inclined to use mutagens, electromagnetic radiation or ion beams for modifying the claimed plants based on the teaching of Cosner. Datta, Broertjes and Sharova do not cure the deficiencies of Cosner.

Although Datta discloses using gamma rays for changing the flower color, Datta does not disclose nor suggest a method for altering the color of a New

Guinea Impatiens plant to have an altered or striped color as claimed. Datta discloses using gamma rays on plants other than New Guinea Impatiens plants. Datta does not disclose nor suggest that its method would work on New Guinea Impatiens plants and repeatedly produce the striped color as claimed. Applicants submit that there is no reasonable expectation of success even if one were to modify Cosner's plants with the method disclosed by Datta based on the Examiner's reasoning that Cosner is able to produce striped flowers. The striped flowers of Cosner are produced by phenotype selection and traditional breeding methods (column 9, lines 59-63) as opposed to modifying the plants by radiation or chemical mutagens.

Broertjes discloses using chemical mutagens on plants (page 13). Although Broertjes discloses in Chapter 5 irradiation of ornamental plants, Broertjes does not disclose nor suggest a method for altering the color of a New Guinea Impatiens plant to have an altered or striped color as claimed. Broertjes discloses using gamma rays on plants other than New Guinea Impatiens plants. Broertjes does not disclose nor suggest that its method would work on New Guinea Impatiens plants and repeatedly produce the striped color as claimed. Applicants submit that there is no reasonable expectation of success even if one were to modify Cosner's plants with the method disclosed by Broertjes based on the Examiner's reasoning that Cosner is able to produce striped flowers. The striped flowers of Cosner are produced by phenotype selection and traditional breeding methods (column 9, lines 59-63) as opposed to modifying the plants by radiation or chemical mutagens.

Sharova discloses mutation of flowering plants (page 1). Sharova disclose that features of the plants are changed, such as the shape (page 4), size (page 5), changing one color to another (page 4 where the color of a flower is changed from orange to yellow), producing circular spots (pages 9 and 11), and flower numbers (page 11). Sharova does not disclose or suggest a method for altering the color of a New Guinea Impatiens plant to have an altered or striped color as claimed. Sharova does not disclose nor suggest that its method would work on New Guinea Impatiens plants and repeatedly produce the striped

color as claimed. Applicants submit that there is no reasonable expectation of success even if one were to modify Cosner's plants with the method disclosed by Sharova based on the Examiner's reasoning that Cosner is able to produce striped flowers. The striped flowers of Cosner are produced by phenotype selection and traditional breeding methods (column 9, lines 59-63) as opposed to modifying the plants by radiation or chemical mutagens.

For all of the above reasons, Applicants respectfully request withdrawal of the rejection of claims 62-64, 70-73 and 80-81 under 35 U.S.C. § 103(a), as being unpatentable over Cosner, U.S. Patent No. 6,353,162 in view of Datta, "Ornamental Plants Role of Mutation", Daya Publishing House, Delhi – 110035, 1997, Broertje *et al.*, "Application of Mutation Breeding Methods in the Improvement of Vegetatively Propagated Crops", Elsevier Scientific Publishing Company, 1978 and Sharova *et al.*, "Mutation Variability of Decorative Flowering Annual Plants", Bulletin of the Moldavian SSr Academy of Sciences, No. 3, 1973, pp. 47-53 (translated).

CONCLUSION

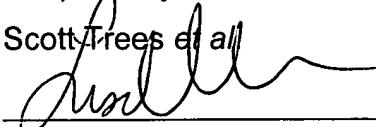
Applicants respectfully submit that the claims comply with the requirements of 35 U.S.C. Sections 102 and 103. Accordingly, a Notice of Allowance is believed in order and is respectfully requested.

Should the Examiner have any questions concerning the above, she is respectfully requested to contact the undersigned at the telephone number listed below. If the Examiner notes any further matters which the Examiner believes may be expedited by a telephone interview, the Examiner is requested to contact the undersigned.

If any additional fees are incurred as a result of the filing of this paper, authorization is given to charge deposit account no. 23-0785.

Respectfully submitted,

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